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volved in litigation, and entered into arrangement whereby money coming into hands of executor would be under joint control, and surety company compelled giving of new bond because of violation of that arrangement, it cannot urge that under will executor had no authority to sell real estate, or collect rents and profits therefrom, and that therefore it was not liable under bond requiring faithful discharge of duties of office.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 683.]

**3. Executors and Administrators (§ 532\*)—Bond of Ancillary Executor—Liability of Surety—Funds Paid to Domiciliary Executor.**—Surety on bond of Virginia executor cannot escape liability for misappropriation of funds coming rightfully into his hands by fact that he turned over such funds to himself as New York executor without approval of the court, and as taxes not having been paid as required by Code 1904, § 492b, the fund could not be paid out.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 685.]

Appeal from Chancery Court of Richmond.

Suit to surcharge settlement of executor by Chas. E. Quincey and another against Willis Bruce Dowd, as executor, and the American Surety Company of New York, as surety on his bond, and another. From the decree rendered, the American Surety Company appeals. Affirmed.

*Wellford & Taylor*, of Richmond, for appellant.

*David Meade White* and *S. A. Anderson*, both of Richmond, for appellee.

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WEST *v.* COMMONWEALTH.

June 12, 1919.

[99 S. E. 654.]

**1. Criminal Law (§ 564 (1)\*)—Venue—Proof.**—In prosecution for grand larceny, it is necessary for the state to prove the venue.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 80.]

**2. Criminal Law (§ 564 (3)\*)—Venue—Circumstantial Evidence.**—The venue of the crime of grand larceny can be proved either by direct or circumstantial evidence.

**3. Criminal Law (§ 564 (3)\*)—Venue—Grand Larceny—Sufficiency of Evidence.**—In prosecution for grand larceny, circumstantial evidence held to prove venue.

**4. Criminal Law (§ 1144 (17)\*)—Appeal—Presumption—Judgment.**—The judgment of the trial court will be presumed to be correct.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 609.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

**5. Larceny (§ 23\*)—Grand Larceny—Separate Offenses.**—The taking of property at different times, though from the same place and same owner, constitutes separate offenses, and no aggregation of successive petit larcenies, not constituting parts of a continuous transaction, but each complete and distinct in itself, can be combined in one prosecution, so as to make a case of grand larceny.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 210.]

**6. Larceny (§ 23\*)—Series of Larcenous Acts—Single Larceny.**—A series of larcenous acts, regardless of amount and value of separate parcels and articles taken, and regardless of the time occupied in the performance, constitutes a single larceny, provided the several acts are done pursuant to a single impulse and in execution of a general fraudulent scheme.

**7. Larceny (§ 79\*)—Grade of Offense—Instruction.**—Where household articles were stolen by domestic servant within very short space of time, during brief absence of owner, and there was no proof, except that of the servant herself, that the articles were taken at different times, it was court's duty, upon giving instruction permitting jury to separate offense into separate units, so as to reduce grade of crime, to charge jury that, if goods were taken pursuant to a single impulse, there was but one crime.

**8. Larceny (§ 64 (1)\*)—Disappearance of Household Articles—Criminal Intent.**—The mysterious disappearance of household articles, subsequently found in possession of former domestic servant, was evidence that the articles had been taken by such servant with criminal intent.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 232.]

**9. Larceny (§ 41\*)—Possession of Stolen Goods—Burden of Proof.**—Where household articles, which had mysteriously disappeared, were subsequently found in possession of a former domestic servant of owner, the former servant has the burden of explaining her possession thereof.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 232.]

**10. Criminal Law (§ 770 (3)\*)—Issues—Misleading Instructions.**—The failure to notice in the instructions on one side a theory relied upon and embodied in the instructions for the other results in apparent contradiction, tending to confuse and mislead jury.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 724.]

**11. Criminal Law (§ 823 (17)\*)—Grand Larceny—Instruction.**—In prosecution for grand larceny, where court instructed jury that defendant could not be convicted of grand larceny if goods of value of \$50 or more were taken at different times, unless goods of such value were taken at one time, the failure to refer to the value of

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

property taken necessary to constitute grand larceny in subsequent part of instruction, charging that larcenous acts at different times, if pursuant to a single impulse, constitute but one offense, was not error.

**12. Larceny (§ 65\*)—Household Articles—Grand Larceny—Sufficiency of Evidence.**—Evidence held to sustain conviction of domestic servant for grand larceny of household articles.

Error to Hustings Court of Petersburg.

Frances West was convicted of grand larceny, and she brings error. Affirmed.

*H. M. Smith, Jr.*, of Richmond, and *Gilliam & Gilliam*, of Petersburg, for plaintiff in error.

*The Attorney General*, for the Commonwealth.

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NATIONAL SURETY CO. et al. v. COMMONWEALTH ex rel.  
WESTINGHOUSE ELECTRIC & MFG. CO.

June 12, 1919.

[99 S. E. 657.]

**1. Appeal and Error (§ 1232\*)—Supersedeas Bond—Judgment “Affirmed.”**—Judgment is “affirmed” within a supersedeas bond conditioned to satisfy it in such event to the extent that it remains unchanged by an amended judgment on appeal, authorized by Code 1904, § 3485.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Affirm.]

**2. Appeal and Error (§ 1232\*)—Supersedeas Bond—Judgment “Affirmed.”**—Judgment is “affirmed” as a whole, though part of it is released by plaintiff’s own act, within a supersedeas bond conditioned to satisfy it if affirmed, where it is reversed with condition that, if plaintiff elect to relinquish interest, it shall stand affirmed; and plaintiff so elects.

**3. Principal and Surety (§ 59\*)—Surety Companies—Law Governing.**—The general rule is that contracts of surety companies, which receive compensation for the risk assumed, are governed by the same principles as insurance contracts.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 14.]

**4. Pleading (§ 139\*)—Set-Off—Necessity of Pleading.**—A set-off of a judgment not put in issue by the pleadings nor set out in the

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.